

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:
ENRON CREDITORS RECOVERY
CORP., *et al.*,

Reorganized Debtors.

ENRON CREDITORS RECOVERY
CORP.,

Appellant,

v.

INTERNATIONAL FINANCE CORP.,
et al.,

Appellees.

Chapter 11
Case No. 01-16034 (AJG)

Jointly Administered

Adv. Pro. No. 03-93370 (AJG)

District Court
Case No. 07-06597 (AKH)

ORAL ARGUMENT REQUESTED

**NOTICE OF MOTION FOR RECONSIDERATION OF
THE COURT'S OCTOBER 10, 2007 ORDER
DENYING APPELLEES' MOTION TO DISMISS**

Appellees Caisse de Dépôt et Placement du Québec and National Australia Bank (the "Appellees"), upon the accompanying memorandum of law and all other papers and proceedings in the above-captioned appeal (the "Appeal"), respectfully move (the "Motion") before the Honorable Alvin K. Hellerstein, United States District Judge, at the United States District Court for the Southern District of New York (the "Court"), pursuant to this Court's inherent powers and Local Civil Rule 6.3, for reconsideration and vacatur of the opinion and order in this action entered October 10, 2007 (the "Opinion") denying Appellees' Motion to Dismiss the Appeal (the "Motion to Dismiss") and for the further relief set forth below.

Appellees respectfully submit that they are entitled to the requested relief because the Opinion manifests a misunderstanding of the underlying facts and it does not address the fundamental issue of this Court's subject matter jurisdiction.

First, the Opinion rests on a misapprehension concerning the timing and content of the order entered in this action by Judge Gonzalez on June 5, 2006, pursuant to Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") 7054 and 9021 (the "7054 Order"). The Opinion incorrectly refers to the 7054 Order as having been entered on June 15, 2006, indicating that the Court confused the 7054 Order with an order entered on June 15, 2006 (the "June 15 Order") in favor of an altogether different group of defendants. The Opinion also incorrectly attributes the deletion of certain language from the June 15 Order to the 7054 Order.

Second, the Opinion overlooks critical factual and substantive differences between the Appeal and the cases cited in the Opinion. In ruling on the Motion to Dismiss, the Court apparently did not consider whether the belated objection of Enron Creditors Recovery Corp. ("Enron") to the form of the 7054 Order deprives this Court of subject-matter jurisdiction to entertain Enron's belated objections to the purported infirmities of the 7054 Order. Only if this Court has subject-matter jurisdiction to entertain such objections may the Court *subsequently* find that the judgment entered on August 9, 2006 pursuant to the 7054 Order was not final, and, therefore, that the Appeal is timely. Pursuant to 28 U.S.C. § 158(c)(2), Bankruptcy Rule 8002(a), and *Bowles v. Russell*, 551 U.S. ___, 127 S.Ct. 2360 (2007), read in conjunction with Federal Rules of Civil Procedure 54(b), 58, and 62(h) and with Second Circuit case law interpreting those rules, and consistent with *Lindsay v. Beneficial Reinsurance Co.*, 59 F.3d 942 (9th Cir.

1995), *cert. denied* 516 U.S. 1074 (1996), this Court lacks subject-matter jurisdiction to entertain Enron's appeal. The grounds for the requested relief are explained in further detail in Appellees' accompanying memorandum of law.

WHEREFORE, the Appellees respectfully request that this Court reconsider and vacate the Opinion, restore Appellees' Motion to Dismiss Enron's Appeal, grant that Motion, and award all other relief that this Court deems appropriate.

Appellees request oral argument on the Motion.

Dated: October 19, 2007

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON, LLP

By: /s/ Stephen J. Shimshak
Stephen J. Shimshak (SS-8822)
Douglas R. Davis (DD-0874)
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

Attorneys for Appellees
Caisse de Dépôt et Placement du Québec
and National Australia Bank